IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 397 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRABHAVATI A VORA

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MS ARCHANA ACHARYA FOR MR SB VAKIL for Petitioner No. 1

MS FALGUNI PATEL, AGP. for Respondent No. 1-2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 23/04/2003

ORAL JUDGEMENT

1 This appeal is filed by the original claimant being aggrieved by the judgment and award dated 6/7/1979 passed by the Court of Extra Assistant Judge, Surat in Land Reference Case No. 15 of 1977.

2 An area of 340 sq.mtrs. of land belonging to the appellant came to be acquired by the State Government for

flood protection measure on the left bank of River Tapi in Surat city. The said land falls within survey no.7 and was given final plot no.4. Notification under Section 4 of the Land Acquisition Act,1894 ('the Act') was published on 1.3.1973, and thereafter, Notification under Section 6 of the Act was published on 11.10.1973. After observing necessary procedure and formality prescribed under the Act, and after hearing the claimants and interested persons the Land Acquisition Officer viz., respondent no.1 awarded the compensation @ Rs.24/- per sq.mtr. by award dated 17.11.1976, as against Rs.80/per sq.yd. claimed by the appellant.

3 Not satisfied with the compensation awarded by respondent No.1, the appellant sought a Reference on 29/12/1976 and the same came to be granted on 18/5/1977. Accordingly, the case was registered as Land Reference Case No. 15 of 1977.

4 The Reference Court enhanced the compensation to Rs.34/- per sq.yd granting additional compensation Rs.10/- per sq.yd. along with solatium @ 15% and interest @ 4 1/2%.

5 Ms.Archana, appearing for Mr.S.B.Vakil for the appellant assails the impugned judgment and order of the Reference Court and submitted that the Reference Court had not appreciated the evidence brought before it and the compensation awarded was on lower side and was required to be enhanced. It was submitted that the Reference Court failed to take into consideration that the land was situated in a well developed area in the city of Surat and the potentiality of the acquired land ought to have been taken into consideration while fixing the rate of compensation. It was therefore submitted that taking into consideration the fact that the prices were increasing day to day in the city of Surat the appellant be awarded compensation at the rate claimed viz.Rs.80/per sq.yd.

6 As against this, Ms.Falguni Patel, learned AGP. appearing on behalf of the respondent submitted that respondent No.1 had taken into consideration all relevant factors while making award @ 24% per sq.yd. and despite that the Reference Court having enhanced compensation to Rs.34/- per sq.yd., there was no case made out for any further enhancement and the judgment and award of the Reference Court be upheld and appeal be dismissed. It was further submitted that no evidence was produced to show that there was any increase in prices of land in the surrounding vicinity, while the comparable case, being

purchase of plot No.26 by one Shri.Laiwala pertained to a plot of land which was abutting on road while the land under acquisition was away from the road and on the River bank. In these circumstances, according to learned Advocate for the respondent there was no reason to enhance compensation any further.

7 The Reference Court has taken into consideration the deposition of one Shri Amrutlal Vitthaldas Vora, Exh.13. He is the husband of the appellant-claimant. The deposition of one Shri L.G.Laiwala, Exh.30, has also been taken into consideration. It is an admitted fact that the claimant had submitted plans for construction on the acquired land to the Surat Municipal Corporation and accordingly the permission had been granted by the said local authority, the plan and the permission having been exhibited at Exhibits 22 & 23 respectively. So far as the deposition of Shri.Laiwala is concerned, it has come on record that he purchased plot No.26 which is forming part of survey No.7 in the year 1971 under a registered sale deed dated 6/2/1971 for a sum of Rs.3,865/- at the rate of Rs.31/- per sq.yd. The sale deed had been exhibited at Exhibit 32. In light of the fact that during the course of cross examination nothing has come on record to disbelieve the say of the said witness the Reference Court has proceeded to consider the said sale as comparable instance and based its decision to enhance the compensation thereupon. The Reference Court has also taken into consideration that plot No.4 of survey No.7 viz. land under acquisition was on the northern side of land of Shri Laiwala at a distance of about 600 to 700 feet from plot No.26 of survey No.7, which was the parcel of land purchased by Shri Laiwala on 6/2/1971. Thus, on an overall consideration of the facts and evidence which have come on record the Reference Court fixed the market price of the land under acquisition at Rs.34/- per sq.yd.

8 The position in law is well settled that once a sale instance which is held to be admissible, comparable and proximate in point of time to the the date of Notification under Section 4 of the Act the same could be adopted as a basis for working out, enhancement of compensation, if otherwise warranted on facts of the case. The position as to rise in price of land has been consistently stated to the effect that, in absence of any direct evidence as to rise of price, it would be open to the Court to adopt a rise of 10% as an average per year from the base price i.e. the price proved on record on the basis of comparable case. This position has been laid down by unreported decision in First Appeal Nos.3658 of 2001 to 3659 of 2001 with Civil Application Nos.9164 &

9165 of 2001 by Division Bench of this Court (Coram :Mr.Justice B.C.Patel (as he then was) and Mr.Justice S.D.Dave) dated 6/11/2001. Applying the ratio of the aforesaid decision of Division Bench, if price of Rs.31/- per sq.yd., which is the the price at which Survey No.26 of Survey No.7 was purchased by Shri Laiwala, is taken as basis and rate of enhancement of 10% p.a. is applied to the said figure, the increase in the compensation would come to Rs.37/-per sq.yd. The sale instance in question is dated 6/2/1971 and the Notification under Section 4 in the case of the land under acquisition is dated 1/3/1973. Thus there would be an increase of 10% p.a. for the intervening period of two years which would give a figure of Rs.37.20 ps. and on rounding of Rs.37/- per sq.yd. can be adopted.

9 In these circumstances, the impugned judgment and order are modified to the extent that instead of compensation being worked out at Rs.34/- per sq.yd. as held by the Reference Court the appellant would be entitled to enhanced compensation @ Rs.37/- per sq.yd. The rest of the award as regards solatium and interest shall remain undisturbed. The appellant will be entitled to interest @ 4 1/2% on such additional compensation.

10 The appeal is accordingly partly allowed to the aforesaid extent. No order as to costs.

(D.A.Mehta,J)

m.m.bhatt